

AMENDED IN ASSEMBLY APRIL 15, 2015

AMENDED IN ASSEMBLY MARCH 12, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 272**

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**Introduced by Assembly Member Lackey**

*(Coauthors: Assembly Members Chávez, McCarty, Waldron, and Wilk)*

*(Coauthor: Senator Vidak)*

February 11, 2015

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An act to amend Section ~~12926~~ 830.6 of the ~~Government~~ *Penal Code*, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 272, as amended, Lackey. California Fair Employment and Housing Act. *Act: reserve peace officers.*

Under the California Fair Employment and Housing Act, it is unlawful to engage in specified discriminatory practices in employment or housing accommodations on the basis of certain specified characteristics, including race, creed, or national origin. Existing law defines these characteristics and other terms for purposes of the act.

~~This bill would define specified reserve or auxiliary public safety officers as "employees" for purposes of these provisions.~~

*Under existing law, a person deputized or appointed as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve police officer of a transit district, a reserve park ranger, a reserve harbor or port police officer, or a reserve officer of a school district, among others, by the proper authority, who is assigned specific police functions by that authority or is designated by*

local ordinance or resolution, and who meets specified requirements, is a peace officer.

This bill would make a person deputized or appointed by the proper authority as a peace officer pursuant to the above provisions an employee for purposes of the California Fair Employment and Housing Act.

The bill would also update an obsolete cross-reference.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 830.6 of the Penal Code is amended to  
 2 read:  
 3 830.6. (a) (1) Whenever ~~any~~ a qualified person is deputized  
 4 or appointed by the proper authority as a reserve or auxiliary sheriff  
 5 or city police officer, a reserve deputy sheriff, a reserve deputy  
 6 marshal, a reserve police officer of a regional park district or of a  
 7 transit district, a reserve park ranger, a reserve harbor or port police  
 8 officer of a county, city, or district as specified in Section 663.5  
 9 of the Harbors and Navigation Code, a reserve deputy of the  
 10 Department of Fish and Game, a reserve special agent of the  
 11 Department of Justice, a reserve officer of a community service  
 12 district which is authorized under subdivision ~~(h)~~ (i) of Section  
 13 ~~61600~~ 61100 of the Government Code to maintain a police  
 14 department or other police protection, a reserve officer of a school  
 15 district police department under Section 35021.5 of the Education  
 16 Code, a reserve officer of a community college police department  
 17 under Section 72330 of the Education Code, a reserve officer of  
 18 a police protection district formed under Part 1 (commencing with  
 19 Section 20000) of Division 14 of the Health and Safety Code, or  
 20 a reserve housing authority patrol officer employed by a housing  
 21 authority defined in subdivision (d) of Section 830.31, and is  
 22 assigned specific police functions by that authority, the person is  
 23 a peace officer, if the person qualifies as set forth in Section 832.6.  
 24 The authority of a person designated as a peace officer pursuant  
 25 to this paragraph extends only for the duration of the person's  
 26 specific assignment. A reserve park ranger or a transit, harbor, or  
 27 port district reserve officer may carry firearms only if authorized

1 by, and under those terms and conditions as are specified by, his  
2 or her employing agency.

3 (2) Whenever ~~any~~ a qualified person is deputized or appointed  
4 by the proper authority as a reserve or auxiliary sheriff or city  
5 police officer, a reserve deputy sheriff, a reserve deputy marshal,  
6 a reserve park ranger, a reserve police officer of a regional park  
7 district, transit district, community college district, or school  
8 district, a reserve harbor or port police officer of a county, city, or  
9 district as specified in Section 663.5 of the Harbors and Navigation  
10 Code, a reserve officer of a community service district that is  
11 authorized under subdivision ~~(h)~~ (i) of Section ~~61600~~ 61100 of the  
12 Government Code to maintain a police department or other police  
13 protection, or a reserve officer of a police protection district formed  
14 under Part 1 (commencing with Section 20000) of Division 14 of  
15 the Health and Safety Code, and is so designated by local ordinance  
16 or, if the local agency is not authorized to act by ordinance, by  
17 resolution, either individually or by class, and is assigned to the  
18 prevention and detection of crime and the general enforcement of  
19 the laws of this state by that authority, the person is a peace officer,  
20 if the person qualifies as set forth in paragraph (1) of subdivision  
21 (a) of Section 832.6. The authority of a person designated as a  
22 peace officer pursuant to this paragraph includes the full powers  
23 and duties of a peace officer as provided by Section 830.1. A  
24 transit, harbor, or port district reserve police officer, or a city or  
25 county reserve peace officer who is not provided with the powers  
26 and duties authorized by Section 830.1, has the powers and duties  
27 authorized in Section 830.33, or in the case of a reserve park ranger,  
28 the powers and duties that are authorized in Section 830.31, or in  
29 the case of a reserve housing authority patrol officer, the powers  
30 and duties that are authorized in subdivision (d) of Section 830.31,  
31 and a school district reserve police officer or a community college  
32 district reserve police officer has the powers and duties authorized  
33 in Section 830.32.

34 (b) Whenever ~~any~~ a person designated by a Native American  
35 tribe recognized by the United States Secretary of the Interior is  
36 deputized or appointed by the county sheriff as a reserve or  
37 auxiliary sheriff or a reserve deputy sheriff, and is assigned to the  
38 prevention and detection of crime and the general enforcement of  
39 the laws of this state by the county sheriff, the person is a peace  
40 officer, if the person qualifies as set forth in paragraph (1) of

1 subdivision (a) of Section 832.6. The authority of a peace officer  
2 pursuant to this subdivision includes the full powers and duties of  
3 a peace officer as provided by Section 830.1.

4 (c) *A person deputized or appointed by the proper authority as*  
5 *a peace officer pursuant to subdivision (a) or (b), including, but*  
6 *not limited to, a person who is deputized or appointed by the proper*  
7 *authority as a reserve deputy sheriff or a reserve city police officer,*  
8 *is an employee of the appointing authority for purposes of the*  
9 *California Fair Employment and Housing Act (Part 2.8*  
10 *(commencing with Section 12900) of Division 3 of Title 2 of the*  
11 *Government Code).*

12 (e)

13 (d) Whenever ~~any~~ a person is summoned to the aid of any  
14 uniformed peace officer, the summoned person is vested with the  
15 powers of a peace officer that are expressly delegated to him or  
16 her by the summoning officer or that are otherwise reasonably  
17 necessary to properly assist the officer.

18 ~~SECTION 1. Section 12926 of the Government Code is~~  
19 ~~amended to read:~~

20 ~~12926. As used in this part in connection with unlawful~~  
21 ~~practices, unless a different meaning clearly appears from the~~  
22 ~~context, the following terms have the following meanings:~~

23 (a) ~~“Affirmative relief” or “prospective relief” includes the~~  
24 ~~authority to order reinstatement of an employee, awards of backpay,~~  
25 ~~reimbursement of out-of-pocket expenses, hiring, transfers,~~  
26 ~~reassignments, grants of tenure, promotions, cease and desist~~  
27 ~~orders, posting of notices, training of personnel, testing, expunging~~  
28 ~~of records, reporting of records, and any other similar relief that~~  
29 ~~is intended to correct unlawful practices under this part.~~

30 (b) ~~“Age” refers to the chronological age of any individual who~~  
31 ~~has reached his or her 40th birthday.~~

32 (c) ~~“Employee” also includes a qualified person deputized or~~  
33 ~~appointed by proper authority as a reserve or auxiliary sheriff or~~  
34 ~~city police officer, a deputy sheriff, or a reserve police officer of~~  
35 ~~a regional park district or a transit district, and is assigned specific~~  
36 ~~police functions. “Employee” does not include any individual~~  
37 ~~employed by his or her parents, spouse, or child, or any individual~~  
38 ~~employed under a special license in a nonprofit sheltered workshop~~  
39 ~~or rehabilitation facility.~~

1 ~~(d) “Employer” includes any person regularly employing five~~  
2 ~~or more persons, or any person acting as an agent of an employer,~~  
3 ~~directly or indirectly, the state or any political or civil subdivision~~  
4 ~~of the state, and cities, except as follows:~~

5 ~~“Employer” does not include a religious association or~~  
6 ~~corporation not organized for private profit.~~

7 ~~(e) “Employment agency” includes any person undertaking for~~  
8 ~~compensation to procure employees or opportunities to work.~~

9 ~~(f) “Essential functions” means the fundamental job duties of~~  
10 ~~the employment position the individual with a disability holds or~~  
11 ~~desires. “Essential functions” does not include the marginal~~  
12 ~~functions of the position.~~

13 ~~(1) A job function may be considered essential for any of several~~  
14 ~~reasons, including, but not limited to, any one or more of the~~  
15 ~~following:~~

16 ~~(A) The function may be essential because the reason the~~  
17 ~~position exists is to perform that function.~~

18 ~~(B) The function may be essential because of the limited number~~  
19 ~~of employees available among whom the performance of that job~~  
20 ~~function can be distributed.~~

21 ~~(C) The function may be highly specialized, so that the~~  
22 ~~incumbent in the position is hired for his or her expertise or ability~~  
23 ~~to perform the particular function.~~

24 ~~(2) Evidence of whether a particular function is essential~~  
25 ~~includes, but is not limited to, the following:~~

26 ~~(A) The employer’s judgment as to which functions are essential.~~

27 ~~(B) Written job descriptions prepared before advertising or~~  
28 ~~interviewing applicants for the job.~~

29 ~~(C) The amount of time spent on the job performing the function.~~

30 ~~(D) The consequences of not requiring the incumbent to perform~~  
31 ~~the function.~~

32 ~~(E) The terms of a collective bargaining agreement.~~

33 ~~(F) The work experiences of past incumbents in the job.~~

34 ~~(G) The current work experience of incumbents in similar jobs.~~

35 ~~(g) (1) “Genetic information” means, with respect to any~~  
36 ~~individual, information about any of the following:~~

37 ~~(A) The individual’s genetic tests.~~

38 ~~(B) The genetic tests of family members of the individual.~~

39 ~~(C) The manifestation of a disease or disorder in family members~~  
40 ~~of the individual.~~

1     ~~(2) “Genetic information” includes any request for, or receipt~~  
2 ~~of, genetic services, or participation in clinical research that~~  
3 ~~includes genetic services, by an individual or any family member~~  
4 ~~of the individual.~~

5     ~~(3) “Genetic information” does not include information about~~  
6 ~~the sex or age of any individual.~~

7     ~~(h) “Labor organization” includes any organization that exists~~  
8 ~~and is constituted for the purpose, in whole or in part, of collective~~  
9 ~~bargaining or of dealing with employers concerning grievances,~~  
10 ~~terms or conditions of employment, or of other mutual aid or~~  
11 ~~protection.~~

12     ~~(i) “Medical condition” means either of the following:~~

13     ~~(1) Any health impairment related to or associated with a~~  
14 ~~diagnosis of cancer or a record or history of cancer.~~

15     ~~(2) Genetic characteristics. For purposes of this section, “genetic~~  
16 ~~characteristics” means either of the following:~~

17     ~~(A) Any scientifically or medically identifiable gene or~~  
18 ~~chromosome, or combination or alteration thereof, that is known~~  
19 ~~to be a cause of a disease or disorder in a person or his or her~~  
20 ~~offspring, or that is determined to be associated with a statistically~~  
21 ~~increased risk of development of a disease or disorder, and that is~~  
22 ~~presently not associated with any symptoms of any disease or~~  
23 ~~disorder.~~

24     ~~(B) Inherited characteristics that may derive from the individual~~  
25 ~~or family member, that are known to be a cause of a disease or~~  
26 ~~disorder in a person or his or her offspring, or that are determined~~  
27 ~~to be associated with a statistically increased risk of development~~  
28 ~~of a disease or disorder, and that are presently not associated with~~  
29 ~~any symptoms of any disease or disorder.~~

30     ~~(j) “Mental disability” includes, but is not limited to, all of the~~  
31 ~~following:~~

32     ~~(1) Having any mental or psychological disorder or condition,~~  
33 ~~such as intellectual disability, organic brain syndrome, emotional~~  
34 ~~or mental illness, or specific learning disabilities, that limits a~~  
35 ~~major life activity. For purposes of this section:~~

36     ~~(A) “Limits” shall be determined without regard to mitigating~~  
37 ~~measures, such as medications, assistive devices, or reasonable~~  
38 ~~accommodations, unless the mitigating measure itself limits a~~  
39 ~~major life activity.~~

1 ~~(B) A mental or psychological disorder or condition limits a~~  
2 ~~major life activity if it makes the achievement of the major life~~  
3 ~~activity difficult.~~

4 ~~(C) “Major life activities” shall be broadly construed and shall~~  
5 ~~include physical, mental, and social activities and working.~~

6 ~~(2) Any other mental or psychological disorder or condition not~~  
7 ~~described in paragraph (1) that requires special education or related~~  
8 ~~services.~~

9 ~~(3) Having a record or history of a mental or psychological~~  
10 ~~disorder or condition described in paragraph (1) or (2), which is~~  
11 ~~known to the employer or other entity covered by this part.~~

12 ~~(4) Being regarded or treated by the employer or other entity~~  
13 ~~covered by this part as having, or having had, any mental condition~~  
14 ~~that makes achievement of a major life activity difficult.~~

15 ~~(5) Being regarded or treated by the employer or other entity~~  
16 ~~covered by this part as having, or having had, a mental or~~  
17 ~~psychological disorder or condition that has no present disabling~~  
18 ~~effect, but that may become a mental disability as described in~~  
19 ~~paragraph (1) or (2).~~

20 ~~“Mental disability” does not include sexual behavior disorders,~~  
21 ~~compulsive gambling, kleptomania, pyromania, or psychoactive~~  
22 ~~substance use disorders resulting from the current unlawful use of~~  
23 ~~controlled substances or other drugs.~~

24 ~~(k) “Military and veteran status” means a member or veteran~~  
25 ~~of the United States Armed Forces, United States Armed Forces~~  
26 ~~Reserve, the United States National Guard, and the California~~  
27 ~~National Guard.~~

28 ~~(l) “On the bases enumerated in this part” means or refers to~~  
29 ~~discrimination on the basis of one or more of the following: race,~~  
30 ~~religious creed, color, national origin, ancestry, physical disability,~~  
31 ~~mental disability, medical condition, genetic information, marital~~  
32 ~~status, sex, age, sexual orientation, or military and veteran status.~~

33 ~~(m) “Physical disability” includes, but is not limited to, all of~~  
34 ~~the following:~~

35 ~~(1) Having any physiological disease, disorder, condition,~~  
36 ~~cosmetic disfigurement, or anatomical loss that does both of the~~  
37 ~~following:~~

38 ~~(A) Affects one or more of the following body systems:~~  
39 ~~neurological, immunological, musculoskeletal, special sense~~  
40 ~~organs, respiratory, including speech organs, cardiovascular,~~

1 reproductive, digestive, genitourinary, hemic and lymphatic, skin,  
2 and endocrine.

3 (B) Limits a major life activity. For purposes of this section:

4 (i) “Limits” shall be determined without regard to mitigating  
5 measures such as medications, assistive devices, prosthetics, or  
6 reasonable accommodations, unless the mitigating measure itself  
7 limits a major life activity.

8 (ii) A physiological disease, disorder, condition, cosmetic  
9 disfigurement, or anatomical loss limits a major life activity if it  
10 makes the achievement of the major life activity difficult.

11 (iii) “Major life activities” shall be broadly construed and  
12 includes physical, mental, and social activities and working.

13 (2) Any other health impairment not described in paragraph (1)  
14 that requires special education or related services.

15 (3) Having a record or history of a disease, disorder, condition,  
16 cosmetic disfigurement, anatomical loss, or health impairment  
17 described in paragraph (1) or (2), which is known to the employer  
18 or other entity covered by this part.

19 (4) Being regarded or treated by the employer or other entity  
20 covered by this part as having, or having had, any physical  
21 condition that makes achievement of a major life activity difficult.

22 (5) Being regarded or treated by the employer or other entity  
23 covered by this part as having, or having had, a disease, disorder,  
24 condition, cosmetic disfigurement, anatomical loss, or health  
25 impairment that has no present disabling effect but may become  
26 a physical disability as described in paragraph (1) or (2).

27 (6) “Physical disability” does not include sexual behavior  
28 disorders, compulsive gambling, kleptomania, pyromania, or  
29 psychoactive substance use disorders resulting from the current  
30 unlawful use of controlled substances or other drugs.

31 (n) Notwithstanding subdivisions (j) and (m), if the definition  
32 of “disability” used in the federal Americans with Disabilities Act  
33 of 1990 (Public Law 101-336) would result in broader protection  
34 of the civil rights of individuals with a mental disability or physical  
35 disability, as defined in subdivision (j) or (m), or would include  
36 any medical condition not included within those definitions, then  
37 that broader protection or coverage shall be deemed incorporated  
38 by reference into, and shall prevail over conflicting provisions of,  
39 the definitions in subdivisions (j) and (m).

- 1     ~~(o) “Race, religious creed, color, national origin, ancestry,~~  
2 ~~physical disability, mental disability, medical condition, genetic~~  
3 ~~information, marital status, sex, age, sexual orientation, or military~~  
4 ~~and veteran status” includes a perception that the person has any~~  
5 ~~of those characteristics or that the person is associated with a~~  
6 ~~person who has, or is perceived to have, any of those~~  
7 ~~characteristics.~~
- 8     ~~(p) “Reasonable accommodation” may include either of the~~  
9 ~~following:~~
- 10     ~~(1) Making existing facilities used by employees readily~~  
11 ~~accessible to, and usable by, individuals with disabilities.~~
- 12     ~~(2) Job restructuring, part-time or modified work schedules,~~  
13 ~~reassignment to a vacant position, acquisition or modification of~~  
14 ~~equipment or devices, adjustment or modifications of examinations,~~  
15 ~~training materials or policies, the provision of qualified readers or~~  
16 ~~interpreters, and other similar accommodations for individuals~~  
17 ~~with disabilities.~~
- 18     ~~(q) “Religious creed,” “religion,” “religious observance,”~~  
19 ~~“religious belief,” and “creed” include all aspects of religious~~  
20 ~~belief, observance, and practice, including religious dress and~~  
21 ~~grooming practices. “Religious dress practice” shall be construed~~  
22 ~~broadly to include the wearing or carrying of religious clothing,~~  
23 ~~head or face coverings, jewelry, artifacts, and any other item that~~  
24 ~~is part of the observance by an individual of his or her religious~~  
25 ~~creed. “Religious grooming practice” shall be construed broadly~~  
26 ~~to include all forms of head, facial, and body hair that are part of~~  
27 ~~the observance by an individual of his or her religious creed.~~
- 28     ~~(r) (1) “Sex” includes, but is not limited to, the following:~~  
29     ~~(A) Pregnancy or medical conditions related to pregnancy.~~  
30     ~~(B) Childbirth or medical conditions related to childbirth.~~  
31     ~~(C) Breastfeeding or medical conditions related to breastfeeding.~~
- 32     ~~(2) “Sex” also includes, but is not limited to, a person’s gender.~~  
33 ~~“Gender” means sex, and includes a person’s gender identity and~~  
34 ~~gender expression. “Gender expression” means a person’s~~  
35 ~~gender-related appearance and behavior whether or not~~  
36 ~~stereotypically associated with the person’s assigned sex at birth.~~
- 37     ~~(s) “Sexual orientation” means heterosexuality, homosexuality,~~  
38 ~~and bisexuality.~~
- 39     ~~(t) “Supervisor” means any individual having the authority, in~~  
40 ~~the interest of the employer, to hire, transfer, suspend, lay off,~~

- 1 recall, promote, discharge, assign, reward, or discipline other  
2 employees, or the responsibility to direct them, or to adjust their  
3 grievances, or effectively to recommend that action, if, in  
4 connection with the foregoing, the exercise of that authority is not  
5 of a merely routine or clerical nature, but requires the use of  
6 independent judgment.
- 7 (u) “Undue hardship” means an action requiring significant  
8 difficulty or expense, when considered in light of the following  
9 factors:
- 10 (1) The nature and cost of the accommodation needed.
- 11 (2) The overall financial resources of the facilities involved in  
12 the provision of the reasonable accommodations, the number of  
13 persons employed at the facility, and the effect on expenses and  
14 resources or the impact otherwise of these accommodations upon  
15 the operation of the facility.
- 16 (3) The overall financial resources of the covered entity, the  
17 overall size of the business of a covered entity with respect to the  
18 number of employees, and the number, type, and location of its  
19 facilities.
- 20 (4) The type of operations, including the composition, structure,  
21 and functions of the workforce of the entity.
- 22 (5) The geographic separateness or administrative or fiscal  
23 relationship of the facility or facilities.
- 24 (v) “National origin” discrimination includes, but is not limited  
25 to, discrimination on the basis of possessing a driver’s license  
26 granted under Section 12801.9 of the Vehicle Code.